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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,698	10/03/2003	Scott Miles	0905.ZEVX.DV2.CN	9874
27472 7590 10/05/2007 RANDALL B. BATEMAN BATEMAN IP LAW GROUP 8 EAST BROADWAY, SUITE 550 PO BOX 1319 SALT LAKE CITY, UT 84110			EXAMINER ANDERSON, MICHAEL J	
			ART UNIT 3767	PAPER NUMBER
			MAIL DATE 10/05/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/678,698

Applicant(s)

MILES ET AL.

Examiner

Michael J. Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 82-107 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 82-107 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____  |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :5/29/2007, 4/10/2007, 3/27/2006, 2/18/2005, 1/18/2005, 5/03/2004 and 2/05/2004.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The references cited have been considered, and will be listed on any patent resulting from this application since they were provided on a separate list in the Information Disclosure Statement (IDS) Form PTO/SB/08 in compliance with 37 CFR 1.98(a)(1).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 82-91 and 94-107 are rejected under 35 U.S.C. 102(b) as being anticipated by Danby et al. in US Patent No. 5,151,019.

With regard to claims 82-91 and 94-107, Danby et al., disclose a valve for controlling fluid flow having an elongate flexible infusion line configured for carrying liquids having a proximal portion and a distal portion, as recited in column 1; a first occluder (generally at 3, such as 12) disposed in the infusion set for selectively preventing flow of liquid from the proximal portion toward the distal portion, as recited in column 5 and seen in figures 1A-1C; a first actuator (associated components of 3 such as 12 with 20) with the first occluder for selectively applying force to the infusion line to

enable fluid flow from the proximal portion toward the distal portion and past the first occluder, as recited in column 5 and 6; a second occluder (generally at 4, such as 13) disposed downstream from the first occluder, as seen in figures 1A-1C; an infusion set with a middle portion (generally at 2) disposed in between the first occluder and the second occluder wherein actuating the first actuator moves fluid into the middle portion, as recited in column 5 and seen in figures 1A-1C; a second actuator (associated components of 4 such as 13 with 21) for selectively applying force to the infusion line to enable fluid flow from the middle portion to the distal portion past the second occluder, as recited in columns 5 and 6; drive means (such as 20, 21 with 48-52) for moving the first actuator and the second actuator, as recited in column 8, lines 45-67; an application of force by the first/second actuator against the infusion line that forms a flow channel between the infusion line and the first/second occluder (as the motor rotates the rotary members from a closed position to the open position there is force against the infusion line), as recited in columns 5 and 6; and a force actuator (generally at 2) disposed adjacent the middle portion of applying force to the middle portion to force fluid in the middle portion to flow into the distal portion, as seen in figures 1A-1C.

Danby et al. further disclose an elongate flexible infusion line configured for carrying liquids having a proximal portion, a middle portion and a distal portion, as recited in column 1 and seen in figure 1A-1C; a first occluder (generally at 3, such as 12) disposed in the infusion set for selectively preventing flow of liquid from the proximal portion to the middle portion, as seen in figures 1A-1C; a second occluder (generally at 4, such as 13) disposed in the infusion set for selectively preventing flow from the

middle portion to the distal portion, as seen in figures 1A-1C; an actuator (associated components of 2, such as 37) for applying a force to the middle portion to force fluid in the middle portion to pass the second occluder and flow into the distal portion, as recited in column 1, 5 and 6 and seen in figures 1A-1C; and another actuator (associated components of 3, such as 12 with 20) associated with the first occluder for selectively applying force to the infusion line to enable fluid flow from the proximal portion to the middle portion; and a drive mechanism for moving the actuators, as seen in figure 2.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 92-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danby et al. in US Patent No. 5,151,019 in view of Jemmott in US Patent No. 5,826,621.

Danby et al. disclose the invention as claimed with the exception of a second actuator that applies a compressive force to the infusion set and thereby causes radial expansion to the infusion line adjacent the second occluder and a first actuator that applies a compressive force to the infusion set and thereby causes radial expansion to the infusion set adjacent the first occluder. On the other hand, Jemmott teaches actuation via a compressive force that causes radial expansion, as recited in column 6,

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lines 57-67 and seen in figure 7. Therefore, it would be obvious to one with ordinary skill in the art to modify the invention of Danby et al. to use the seal means of Jemmott et al. as a common way to open/close a passage in a flexible line.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Anderson whose telephone number is (571) 272-2764. The examiner can normally be reached on M-F 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin C. Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael J Anderson

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Examiner  
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MJA  
9/29/2007

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

A handwritten signature in cursive script that reads "Kevin C. Sirmons". The signature is written in black ink and is positioned below the printed name and title.